REMARKS

This communication is in response to the non-final Office Action that issued May 11, 2010. Claims 9, 11, 13, and 44-52 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 5,152,749 ("the '749 patent") in view of U.S. Patent No. 6,723,107 ("the '107 patent"). No claims have been amended or cancelled by this response.

Claim Rejections Under 35 U.S.C. § 103(a)

The Examiner rejected claims 9, 11, 13, and 44-52 under 35 U.S.C. § 103(a) as allegedly being obvious over the '749 patent in view of the '107 patent.

Applicants respectfully traverse the instant rejection.

In rejecting the claims, the Examiner acknowledged that the combination of the '749 and '107 patents does not disclose that the inside corner and the outside corner at the junction of the first and second legs have different shapes as required by the claims. Rather, the '107 patent only discloses an embodiment in Figure 20 in which both the inside corner and the outside corner are 90 degree angles. The Examiner stated that "the embodiment of [the '107 patent] as shown in Fig. 17 shows curved corners" and that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the embodiments of [the '107 patent] to have one corner curved and the other not curved as this *aids in placement of the loop and in using the device*."

The Applicants respectfully submit that the Examiner has not forth a *prima facie* case of obviousness and has improperly relied on the alleged common knowledge in the art in stating that the combination aids in the placement of the loop and in using the device. As set forth in the MPEP, only issues that are peripheral to a claim may be asserted to be common knowledge in the

art. MPEP 2144.03; *In re Zurko*, 258 F.3d 1379, 1385; 59 USPQ2d 1693, 1697 (Fed. Cir. 2001) (holding that conclusions cannot be reached based on one's own understanding or experience or on an assessment of what would be basic knowledge or common sense). Otherwise, documentary evidence must be provided to support the Examiner's conclusions. In fact, the Federal Circuit recently stated that "[i]n making an obviousness rejection, the examiner should not rely on conclusory statements that a particular feature of the invention would have been obvious or well known," but rather "should elaborate [by] discussing the evidence or reasoning that leads the examiner to such a conclusion." *In re Ravi Vaidyanathan*, 2010 U.S. App. LEXIS 10189 at *24-25 (Fed. Cir. 2010).

Here, the Examiner has not done this, but instead simply asserted that one of the central limitations of the independent claim was well known in the art. The Examiner has not provided any documentary evidence showing that it was commonly known in the art that a smooth corner is advantageous in capturing a filament while a sharp corner is advantageous in retaining a filament such that a person having ordinary skill in the art would combine the embodiments disclosed in Figures 17 and 20 to arrive at the embodiment of the present invention claimed in claim 9. Moreover, Figure 17 does not show first and second legs, which are substantially perpendicular, meeting at an intersection with curved corners. Rather, Figure 17 shows a single channel in the shape of a hook—there are no corners. In addition to the lack of evidence showing that the advantage of differential corners was known in the art at the time of filing, the fact that the embodiment shown in Figure 17 has no corners makes it even more unlikely that a person having ordinary skill in the art would combine it with the embodiment shown in Figure 20. It is respectfully submitted that a *prima facie* case of obviousness has not been established for independent claim 9 or claims 11, 13, and 44-52 that depend therefrom.

In view of the foregoing, the rejection under 35 U.S.C. § 103(a) of claims 9, 11, 13, and 44-52 is believed to be overcome. It is, therefore, respectfully requested that the Examiner withdraw this rejection.

CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is respectfully requested.

In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the Examiner would contact the undersigned attorney by telephone at (202) 373-6000 so that prosecution of the application may be expedited.

The Director is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4047.

Respectfully submitted,

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